Ragumaren a/l N Gopal v Kanawagi a/l Seperumaniam

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–1579 OF 2010
APANDI ALI, LIM YEE LAN JJCA AND MOHAMAD ARIFF J
21 FEBRUARY 2013

Legal Profession — Disciplinary board — Appeal against decision of disciplinary board — Appeal against penalties for complaints by complainer — Cross-appeal by complainee two years after decision of disciplinary board — Whether complainee had right to make cross-appeal against decision of disciplinary board — Whether there was inordinate delay in filing cross-appeal — Legal Profession Act 1976 s 103E — Legal Profession (Disciplinary Proceedings) (Appeal) Rules 1994

The appellant ('Ragumaren') and the respondent ('Kanawagi') were both advocates and solicitors. Kanawagi had filed six complaints against Ragumaren, to the disciplinary board ('DB') and Ragumaren was found to be guilty of four complaints and received penalties for each complaint. Dissatisfied with the penalties for two of the complaints, Kanawagi filed an appeal. Almost a year after Kanawagi's appeal, Ragumaren waited and filed the application to cross-appeal and the application was dismissed by the High Court. Hence the present appeal. The issues to be determined in the present appeal were whether Ragumaren had the right to make a cross-appeal against the decision of the DB and was there inordinate delay in the filing of such cross appeal. Kanawagi argued that the right to cross-appeal was statutory as provided under s 103E of the Legal Profession Act 1976 ('LPA') and that there was no provision under the LPA for the filing of any cross-appeal as such and no provision under the said Act which allowed the court to grant any extension of time. Ragumaren submitted that the right to appeal falls under Legal Profession (Disciplinary Proceedings) (Appeal) Rules 1994 and further submitted that he had reasonable grounds for the delay.

Held, dismissing the appeal with costs:
Ragumaren had, from the beginning, the right to appeal, as provided by s 103E of the LPA. Unfortunately, there was an inordinate delay of almost two years. Since the decision of the DB was some 23 months after the lapse of statutory time for Ragumaren to file his appeal, and while Kanawagi appeal was proceeding, Ragumaren then filed the summons in chambers and there was no reasonable explanation given for the delay (see paras 15–16).

[Bahasa Malaysia summary

Perayu ('Ragumaren') dan responden ('Kanawagi') kedua-duanya adalah peguambela dan peguamcara. Kanawagi telah memfailkan enam aduan

terhadap Ragumaren, kepada lembaga tatatertib ('LT') dan Ragumaren didapati bersalah terhadap empat aduan dan menerima penalti untuk setiap aduan. Tidak berpuas hati dengan penalti-penalti untuk kedua-dua aduan, Kanawagi memfailkan rayuan. Lebih kurang setahun selepas rayuan Kanawagi, Ragumaren menunggu dan memfailkan permohonan untuk rayuan balas dan permohonan ditolak oleh Mahkamah Tinggi. Maka rayuan ini. Isu-isu untuk ditentukan dalam rayuan ini adalah sama ada Ragumaren mempunyai hak untuk membuat rayuan balas terhadap keputusan LT dan terdapat kelewatan yang melampau dalam memfailkan rayuan balas sedemikian. Kanawagi berhujah bahawa rayuan balas adalah statutori seperti yang diperuntukkan di bawah s 103E Akta Profesion Undang-Undang 1976 ('APU') dan bahawa tidak terdapat peruntukan di bawah APU untuk pemfailan apa-apa rayuan balas seperti demikian dan tiada peruntukan di bawah Akta tersebut yang membenarkan mahkamah memberikan apa-apa pelanjutan masa. Ragumaren berhujah bahawa hak untuk merayu terangkum di bawah Peraturan-Peraturan Profesion Undang-Undang (Prosiding Tatatertib) (Rayuan) 1994 dan selanjutnya berhujah bahawa dia mempunyai alasan yang munasabah untuk kelewatan tersebut.

Diputuskan, menolak rayuan dengan kos:
Ragumaren telah daripada mula, berhak untuk merayu, seperti yang diperuntukkan oleh s 103E APU. Malangnya terdapat kelewatan yang melampau hampir selama dua tahun. Memandangkan keputusan LT adalah lebih kurang 23 bulan selepas luput masa statutori untuk Ragumaren memfailkan rayuannya, dan sementara rayuan Kanawagi dalam prosiding, Ragumaren kemudiannya memfailkan saman dalam kamar dan tidak terdapat penjelasan yang munasabah yang diberikan untuk kelewatan tersebut (lihat perenggan 15–16).]

Notes

For cases on disciplinary board, see 9 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1486–1489.

Cases referred to

Chin Chen Lee & Anor v Ooi Hock Seng [1993] MLJU 444; [1993] 2 AMR 1229, HC (refd)

Khor Cheng Wah v Sungai Way Leasing Sdn Bhd [1996] 1 MLJ 223, CA (refd)

Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor [2012] 2 MLJ 8; [2012] 1 CLJ 569, FC (refd)

Legislation referred to

Legal Profession Act 1976 s 103E(1)
Legal Profession (Disciplinary Proceedings) (Appeal) Rules 1994 r 10
Rules of the High Court 1980 O 55 r 3

Appeal from: Originating Motion No R1–17–2 of 2008 (High Court, Kuala Lumpur)

Harpal Singh Grewal (Teh Boon Eng and Reny Rao with him) (G Ragumaren & Co) for the appellant.
Dinesh Kanavaji (Khana & Co) for the respondent.
Biliwi Singh for the disciplinary board.

Apandi Ali JCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal against the decision of the learned High Court judge in an interlocutory matter, namely in not granting an application for leave, via a motion (encl 7), to file a cross-appeal by Ragumaren a/l N Gopal ('the appellant') made under O 55 r 3 of the Rules of the High Court 1980.

[2] On 30 May 2012, after hearing submissions by both parties, this court dismissed the appellant's appeal with the agreed costs of RM5,000.

FACTS OF THE CASE

[3] To avoid confusion, we shall refer to the respective parties by their names.

[4] Kanawagi and Ragumaren are advocates and solicitors. On 28 September 2006, Kanawagi had filed six complaints altogether to the disciplinary board ('DB') against Ragumaren.

[5] On 18 December 2007, the DB had found the Ragumaren guilty of complaints Nos 1 and 4–6. These were for:

(a) Complaint No 1
That Ragumaren had unlawfully took over the conduct of a matter from Kanawagi, by being in collusion with Kanawagi's nephew.

(b) Complaint No 4
That Ragumaren had made an irrelevant statement in an affidavit of Kanawagi by stating that there were pending criminal charges against Kanawagi.

(c) Complaint No 5
That Ragumaren had allegedly lied on oath in an affidavit affirmed by himself, whereby in that affidavit, he had stated that he has begun defamation proceedings (unknowingly but in actual fact his lawyers Messrs Haris & Co had only issued a letter of demand and were in the midst of filing the suit).

(d) Complaint No 6
That Ragumaren commented on Kanawagi's character by stating that he had unlawfully acquired the Kota Tinggi Orang Asli trust monies of RM38.5m paid by the Johore State Government through his law firm, Messrs Khana & Co.

[6] Kanawagi was not satisfied with the said decision in respect of complaint No 1 with regard to the failure of Ragumaren to obtain his consent before taking over a matter and whereby the DB only reprimanded Ragumaren; and in respect of complaint No 5 regarding the act of affirming a paragraph in an affidavit which was false and the DB had imposed a fine of RM3,000; which he regarded the fine imposed as inadequate.

[7] Kanawagi filed an appeal in respect to the decisions on complaints Nos 1 and 5 on 21 January 2008. The decisions of the DB on the said complaints were given on 18 December 2007. Ragumaren waited, until he finally filed the application for leave to cross-appeal on 31 November 2009.

ISSUES FOR DETERMINATION

[8] There are basically two issues that need to be determined:

(a) whether the appellant has the right to make a cross-appeal against the decision of the DB?; and

(b) was there inordinate delay in the filing of such cross-appeal?

THE ARGUMENTS BEFORE THIS COURT

By the appellant

[9] The appellant (Ragumaren) submitted that, the right to appeal to the High Court falls under r 10 of the Legal Profession (Disciplinary Proceedings) (Appeal) Rules 1994; which clearly states:

> Where no provision is made under these Rules, the procedure and practice in the Rules of the High Court 1980 shall apply.

[10] When dealing with the issue on delay in filing the cross-appeal, the appellant went on to submit that he had set out reasonable grounds for the delay, even if there was no good reason for the delay, the interest of justice may still require, on the ground that there were merits in the cross-appeal, for leave to be granted.

[11] On this issue, the appellant had referred to the case of *Chin Chen Lee & Anor v Ooi Hock Seng* [1993] MLJU 444; [1993] 2 AMR 1229; the relevant portion at p 1229, which states, in general, the exercise of discretion in an application for extension of time to file notice of cross-appeal. Learned counsel also made a cross reference to O 55 r 3 of the High Court Rules, on cross-appeals, which reads as follows:

> A respondent to an appeal may, within seven days from the date of service on him the memorandum of appeal, file in the High Court and serve upon the appellant a notice in [Form 113B] that he intends to contend on the heanng of the appeal that the decision of the Court below should be varied.

By the respondent

[12] With regards to the first issue before this court, the respondent's (Kanawagi) counsel submitted that the right to cross-appeal is statutory; namely as provided under s 103E(1) of the Legal Profession Act 1976 ('Act 166'), which reads as follows:

> Appeal from the decision of the Disciplinary Board:-
>
> 1 *Any party* aggrieved by any decision or order made by the Disciplinary Board under subsection 100(5), (8) or (9) or section 103D shall *have the right to appeal* to the High Court *within one month* of the receipt of the notification of the decision or order complained against; and no appeal shall lie against any other decision or order made by the Disciplinary Board.
>
> 2 There shall be no judicial review against any decision or order made by the Disciplinary Board.
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> 3 The appeal shall be fixed for hearing before a single Judge of the High Court.
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> 4 The appeal shall be by way of an originating motion setting out the ground of appeal supported by affidavit.
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> 5 Any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court.
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> 6 The Bar Council may in its discretion intervene at any stage of any appeal under this section.
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> 7 The Disciplinary Board shall not be cited as a party in any appeal under this section.
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> 8 The Disciplinary Board shall have the right to appear in and address any High Court, the Court of Appeal or the Federal Court hearing an appeal under this section by an advocate and solicitor whether or not the advocate and solicitor is a member of the Disciplinary Board or the Bar Council.

[13] Furtherance, learned counsel argued that there is no provision under the Act 166 for the filing of any cross-appeal as such and no provision under the said Act that allows the court to grant any extension of time.

[14] On the second issue of delay, learned counsel for the respondent had referred to *Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor* [2012] 2 MLJ 8; [2012] 1 CLJ 569 (FC), which clearly states that the general provision of the Rules of the High Court cannot overcome the specific provision of s 103E(1) of Act 166.

CONCLUSION

[15] It is our unanimous decision that the appellant has from the beginning the right to appeal, which is provided for under s 103E(1) of Act 166. Unfortunately, there was delay. It was an inordinate delay. On inordinate delay, on the facts of the case, we could not help but agree with what Justice Gopal Sri Ram JCA said in *Khor Cheng Wah v Sungai Way Leasing Sdn Bhd* [1996] 1 MLJ 223 at p 229; which reads as follows:

> … when a litigant seeks the intervention of the court in a matter that affects his rights, he must do so timeously. The maxim *vigilantibus, non dormientibus, jura subveniunt,* … is of universal application. Even in cases where a right is exercisable ex debito justitiae, a court may refuse relief to an indolent litigant.

[16] It was an inordinate delay of almost two years; since the decision of the DB was on 18 December 2007 and some 23 months after the lapse of statutory time for the appellant to file his appeal, and while the respondent's appeal was proceeding, the appellant then filed the summons in chambers on 31 November 2009, and there was no reasonable explanation given for the delay. As such, the appeal is dismissed with costs. Costs as agreed at RM5,000. Deposit to be paid to the respondent on account of costs.

Appeal dismissed with costs.

Reported by Afiq Mohamad Noor